ECCLESIA LAW

Private Ecclesiastical Counsel
United States & International

THE APPLICATION OF AN ADVERSE CLAIM

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Subject: Forensic-Legal Analysis of Adverse Claims under UCC Article 8 **Prepared by:** Technical Expert – Ecclesia Law **Reference:** UCC § 8-105; IRS Publication 1212; Trust Indenture Act 1939

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1. What is an Adverse Claim?

An **Adverse Claim** is a formal assertion of a property interest in a financial asset, specifically designed to establish beneficial ownership and superior title. In the context of mortgage foreclosure, it is a commercial assertion that the living woman/man (the Grantor) is the true owner of the credit instrument, rather than the bank or servicing agent.

- **Statutory Basis:** It operates under **Uniform Commercial Code (UCC) § 8-105**, which defines an adverse claim as a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
- **The Object:** The "object" of the claim is the specific financial asset, often identified by a **CUSIP** number or mortgage pool ID, which represents the securitized version of the original promissory note.

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2. How an Adverse Claim Works

The Adverse Claim does not function in isolation; it operates as part of a **"juridical mirror mechanism"** alongside an IRS 1099-OID filing. While the Adverse Claim protects **title** in commercial law, the OID filing corrects the **reporting** in fiscal law.

The Operational Sequence:

1. **Identification:** The financial asset is traced via DTCC (Depository Trust & Clearing Corporation) records to identify the specific trust pool or CUSIP.
2. **Formal Notice:** A **Notice of Adverse Claim** is served upon the Indentured Trustee, the Servicing Agent (Aldermore), and the clearing agent.
3. **Fiscal Alignment:** Simultaneously, a **1099-OID** is filed through an **International Grantor Trust** (using a 98-series EIN). This re-designates the bank as a "nominee" and the Grantor as the "true owner" under the authority of **IRS Publication 1212**.
4. **Regulatory Linkage:** The claim is referenced in a **FinCEN Form 111 (Suspicious Activity Report)**, creating a tri-layer record: commercial (UCC), fiscal (IRS), and regulatory (BSA/FinCEN).

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3. Why the Adverse Claim Works

The efficacy of the Adverse Claim lies in its ability to create a "legal impossibility" for the party seeking foreclosure by forcing them to choose between admitting they have no standing or admitting to fiduciary fraud.

- **Intermediary Liability (UCC § 8-115):** Once a securities intermediary or trustee has been served with a formal notice of an adverse claim, they are no longer shielded from liability if they continue to deal with the asset (e.g., foreclosing) in defiance of that notice.
- **Exposing the Nominee Architecture:** It utilizes the bank's own accounting standards. Per **IRS Publication 1212**, banks function as nominees for the actual owner. The Adverse Claim forces the court to recognize that the bank is a mere "middleman" for the credit created by the signer's signature.
- **Fiduciary Obligation:** Under the **Trust Indenture Act 1939 (§ 315)**, trustees have an affirmative duty to act upon "events of default". The failure to recognize a lawful **Bill of Exchange** discharge or a corrected OID record constitutes such a default, making the trustee liable to the beneficiary (the Grantor).
- **Traceable Evidence:** Because the claim generates an **IRS Transcript trail** (confirming the OID correction), it provides the court with "verifiable transcript evidence" that a federal agency has accepted the Grantor's status as the true owner of the credit.

Conclusion

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The Adverse Claim is a sophisticated tool for **fiduciary enforcement**. It anchors the creditor's rights within lawful commercial and regulatory channels, demonstrating that the client is not asserting an unverified theory but is correcting a **documented fiduciary breach** in nominee reporting.